Otis, Steve

From: Otis, Steve
Sent: Wednesday, January 31, 2001 12:42 PM
To: 'hsr_rules@ftc.gov'
Cc: Wojcik, Slava
Subject: Hart-Scott-Rodino: Proposed Rules 802.50 and 802.51

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The proposed revisions to Rule 802.50 and 802.51 repeatedly use the concept of sales in or into the U.S. during the most recent fiscal year, combined with sales to date since the end of that fiscal year.

This means that you can be measuring between one year and almost two years of sales. Effectively, this means that the $50 million sales threshold under proposed Rules 802.50 and 802.51 would vary between $50 million per year and $25 million per year, depending on how far the entity is into the current fiscal year. The same applies to the $110 million threshold under such proposed rules.

This approach is arbitrary and unreasonable, particularly when applied to an entity with flat sales. The amount of sales per year needed for an exemption under Rules 802.50 and 802.51 should not vary depending on how far an entity is into its current fiscal year.

Apparently, this concept was a DOJ suggestion intended to deal with a situation where sales are trending sharply upward. If it is critical to deal with that situation, then a test based on sales in a 12 trailing month period measured as of a date within 60 days of the filing or closing would be more appropriate and not lead to the arbitrary results that the proposed approach would.

However, a more fundamental question is why the rules for a foreign exemption should be particularly concerned about changes to sales since the end of the last fiscal year, when Rule 801.11 (measuring net sales for the size-of-person test) is not.

Sincerely, Steve Otis

The e-mail did not transmit, so I am sending this by hard copy.